

Summary of “Rivers Bill” Components of Act 138

Vermont Department of Environmental Conservation

Rivers Program, Watershed Management Division

Act 138, known as the Rivers and Lakes Bill (S.202), was signed into law by Governor Peter Shumlin on May 14, 2012. The following summary focusses primarily on the “Rivers Bill” components of legislation. When fully implemented, Act 138 will promote:

- 1) Natural floodplain function, decreasing our reliance on expensive and increasingly vulnerable man-made structures to protect us from flood hazards;
- 2) River management practices to minimize environmental impacts and river erosion hazard, especially in response to the imminent public safety and infrastructure threats we address after a major flood like Irene; and
- 3) Natural stream and river stability by helping towns identify and protect highly sensitive river corridors.

Unless otherwise specified, the following statutory provisions and requirements are effective immediately.

Objective: Comply with the NFIP, and protect floodplains in partnership with Vermont communities.

- Increases support for towns seeking technical reviews of floodplain development proposals. ANR has been given the authority to delegate to trained RPC and municipal staff the authority to review development proposals requiring municipal permits under the NFIP. By creating a greater network of professionals to assist towns with floodplain regulation, Vermont will substantially increase municipal participation, awareness, and protection of their floodplain assets.
- Requires State regulation of floodplain encroachments currently exempt from municipal regulation (agriculture, silviculture, transportation, utilities, schools, etc.). Importantly, this action will help bring Vermont into compliance with the National Flood Insurance Program (NFIP). States that are not in compliance risk suspension from the NFIP and loss of access to the federally subsidized insurance (which paid out 49 million to Vermont policy holders after Irene). The rules must be in effect by July 1, 2014.
- Allows for State floodplain regulations that are more protective than those required by the NFIP. The ANR would be required to work with FEMA, sister agencies, and other interested parties to adopt floodplain rules. The regulation of certain floodplain activities may be delegated by the ANR to other state agencies of jurisdiction (e.g., floodplain developments sought by farmers would be regulated by the Agency of Agriculture).
- Allows the Agency to regulate floodplain developments through a General Permit, which would create an opportunity to spend limited state resources on those floodplain activities which have the greatest potential to impact floodplain functions.
- Requires the ANR to promote floodplain protections through an outreach program that would include helping towns adopt model floodplain protection bylaws and ordinances that would exceed the minimum criteria of the NFIP in terms of hazard mitigation.

Objective: Reduce the vulnerability of private and public property and river ecosystems after floods.

- Allows the State to adopt stream alteration rules. Rule-making authority provides the opportunity for the State to engage interested parties in codifying the management criteria necessary to meet statutory intent.
- Requires the State to adopt rules for conducting emergency protective measures after a flood. Starting March 1, 2013 municipalities will be required to notify the Agency within 24 hours (instead of 72 hours) of taking an emergency protective measure in a river. New rules and associated technical procedures will assist town officials in identifying imminent threats and the emergency measures that will reduce the vulnerability of town citizens and their property in future floods. New Emergency River Management Rules, in effect by March 1, 2013, will:
 - Require an activity to be permitted either through an individual permit or under the coverage of a General Permit;
 - Prohibit the construction of berms unless deemed by the Agency to be a necessary emergency protective measure;
 - Provide activity specific criteria such that emergency protective measure are conducted in manner consistent with the statutory criteria for stream alterations:
 - (1) Will not adversely affect the public safety by increasing flood or fluvial erosion hazards;
 - (2) Will not significantly damage fish life or wildlife;
 - (3) Will not significantly damage the rights of riparian owners; and
 - (4) In case of any waters designated by the board as outstanding resource waters, will not adversely affect the values sought to be protected by designation.
 - Address the management of large woody debris in stream channels after floods.
- Specifies that the State regulates the movement, fill, of excavation of 10 cy or more of instream material, which includes all gradations of sediment, ledge rock, and large woody debris.
- Requires the ANR to establish and maintain a river management training program to help Vtrans, municipalities, consulting engineers, RPCs, and ANR staff identify river instability and design river restoration and protection measures that will both protect river ecosystems and minimize river erosion hazards.

Objective: Increase incentives for river corridor planning and protection.

- Allows for the adoption of rules and requires the adoption of procedures to delineate and protect river corridors and reduce fluvial erosion hazards. The rules would promote the public interest by encouraging municipal shoreland and river corridor protection area zoning bylaws. A *River Corridor Protection Area* is an area within a river corridor subject to fluvial erosion and may occur as a river establishes and maintains the dimension, pattern, and profile associated with *dynamic equilibrium condition* and that would represent a hazard to life, property, and infrastructure placed within the area.
- Establishes the River Corridor and Floodplain Management Program. This change acknowledges the importance of combining the State policy, planning, and regulation of the landforms critical to the management of inundation and fluvial erosion hazards. For instance the legislation requires the Agency to develop recommended best management practices for river corridors, floodplains, and buffers.
- Requires ANR to conduct stream geomorphic assessments and provide river corridor plans, maps, and model protection bylaws to municipalities. Statutory changes require that river corridors to be delineated and mapped based on river sensitivity where a river poses a probable risk of harm to life, property, and infrastructure. River sensitivity means the potential of the river, given its inherent characteristics and

present geomorphic conditions to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposits of sediment, and flooding. This statutory definition creates an important link between the vertical stability of a river (equilibrium conditions) and the public's interest in safety and property protection, which are primary objectives in regulating stream alterations.

- Requires the ANR, RPCs, and municipality to post completed river corridor maps of public web sites. The maps will include and recommend best management practices for river corridor protection areas, flood hazard areas (NFIP floodplains), and buffers. In addition to providing maps, the State will provide municipalities with alternative river corridor protection area bylaws and ordinances.
- Requires the Secretary of Administration to establish a Flood Resilient Communities Program. Through this Program the State would provide increasing financial incentives to those municipalities that have taken greater and greater steps to protect river corridors and floodplains and mitigate other flood and fluvial erosion hazards.
- Provides authority for municipalities to regulate development within river corridor protection areas. Towns may now adopt freestanding bylaws to protect river corridor protection areas.

Act 138 also contained provisions for:

Stormwater: Provide the ANR the authority to adopt rules regulating stormwater discharges during an emergency; and requires ANR to report to the legislature by January 15, 2014 regarding the use of voluntary credits for stormwater discharges from renewable energy projects located at an elevation above 1,500 feet (i.e. wind energy projects).

ANR Water Quality Remediation, Implementation, and Funding Report: On or before December 15, 2012, require the Secretary to report to the legislative committees with recommendations on how to remediate or improve the water quality of the state's surface waters, how to implement remediation or improvement of water quality, and how to fund the remediation or improvement of water quality. The Report must include a description of how the state should regulate development in shorelands of lakes, including whether the state should enact statewide regulation for activities within shorelands of lakes and whether any regulation of activities within shorelands should be based on site-specific criteria.

Transfer of Rulemaking from the Water Resources Panel to the ANR: including the authority to establish mixing zones, adopt water quality standards, make declaratory rulings; establish water quality classifications; establish rules to regulate the use of the public waters, rules to govern the surface levels of lakes, ponds, and reservoirs that are public waters of the state, and rules for considering the size and flow of the navigable waters.

Vermont Housing And Conservation Trust Fund: The Bill would add "the protection of lands for multiple conservation purposes, including the protection of surface waters and associated natural resources" to the list of eligible land conservation activities supported by the Conservation Trust Fund.

Lake Champlain TMDL Implementation Plan: Establish that within 12 months after the issuance of a phosphorus total maximum daily load plan (TMDL) for Lake Champlain by the U.S. Environmental Protection Agency, the ANR shall issue a revised Vermont-specific implementation plan for the Lake Champlain TMDL and update it every 4 years thereafter.